

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

SCOTT B. PRICE v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Knox County
No. 88244 Mary Beth Leibowitz, Judge**

No. E2008-00007-CCA-R3-PC - Filed October 20, 2009

The Petitioner, Scott B. Price, appeals from the Knox County Criminal Court's dismissal of his petition for a writ of coram nobis. The State has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Tennessee Court of Criminal Appeals Rule 20. We hold the petition is barred by the statute of limitations and does not, otherwise, state grounds for relief that would allow the petition to be filed or granted. The State's motion is granted, and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed
Pursuant to Rule 20, Tenn. Ct. Crim. App. R.**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Scott B. Price, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Benjamin A. Ball, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The Petitioner alleges that he was tried and convicted in April 1999, of rape of a child. The conviction and twenty-year sentence were affirmed on appeal. State v. Scott Bradley Price, No. E2000-00441-CCA-R3-CD (Tenn. Crim. App. Nov. 19, 2001). His subsequent petition for post-conviction relief was denied and affirmed on appeal. Scott Bradley Price v. State, No. E2004-02718-CCA-R3-PC (Tenn. Crim. App. Dec. 16, 2005), app. denied (Tenn. May 1, 2006). On December 3, 2007, the Petitioner filed the petition for writ of error coram nobis, which essentially asserts the Petitioner's innocence, fabricated testimony by various witnesses, including the victim, prosecutorial misconduct in knowingly presenting false evidence and ineffective assistance of counsel for failing to seek DNA analysis and analysis of the taped confession to determine if the tape had been altered.

The trial court did not address the one-year statute of limitation provided for a petition for writ of error coram nobis. See T.C.A. §§ 27-7-103, 40-26-105. Instead, it ruled that the jury accredited the victim and the evidence against the Petitioner, who continues to argue his innocence.

It stated, “All material provided by the [petitioner] is prior information and there is not subsequent or newly discovered evidence relating to matters litigated.” The petition was dismissed.

The State contends that the Petitioner’s allegations fail to support the issuance of a writ of error coram nobis in that he failed to establish a “reasonable probability” that newly discovered evidence would have changed the results of the trial. See State v. Workman, 111 S.W.3d 10, 18 (Tenn. Crim. App. 2002). In support, the State notes that the Petitioner’s petition and the brief before this court fail to allege the existence of any newly discovered evidence and, instead, relate to evidence presented at his trial and concerns the conduct of the prosecutor and his trial counsel at the trial.

A writ of error coram nobis lies “for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial.” T.C.A. § 40-26-105; State v. Hart, 911 S.W.2d 371, 374 (Tenn. Crim. App. 1995). The decision to grant or deny such a writ rests within the sound discretion of the trial court. Teague v. State, 772 S.W.2d 915, 921 (Tenn. Crim. App. 1988), cert. denied 493 U.S. 874, 110 S. Ct. 210 (1989). A petition for writ of error coram nobis must be filed within one year of the date the judgment becomes final in the trial court. T.C.A. § 27-7-103; State v. Mixon, 983 S.W.3d 661 (Tenn. 1999); State v. Ratliff, 71 S.W.3d 291 (Tenn. Crim. App. 2001). The only exception to the statute of limitations is when due process requires tolling. Workman v. State, 41 S.W.3d 100, 103 (Tenn. 2001).

In the present case according to the Petitioner, judgment was entered against the Petitioner by the trial court in 1999. The Petitioner did not file his petition for writ of error coram nobis until December 3, 2007. In it, he did not allege subsequently or newly discovered evidence. In fact, he acknowledged in the petition that his trial attorney was aware of the evidence that he claims would have demonstrated his actual innocence but chose not to use it. This court’s opinion in the Petitioner’s post-conviction case likewise reveals that counsel was aware of the statements in the victim’s medical records upon which the Petitioner bases his coram nobis claim, although counsel declined to introduce the records as a matter of trial strategy because they also contained incriminating evidence. See Scott Bradley Price, No. E2004-02718-CCA-R3-PC, slip op. at 8. The Petitioner’s remaining claims are not proper coram nobis claims because they do not fit within the limited framework for coram nobis proceedings. See T.C.A. § 40-26-105(b). In addition, the Petitioner’s claims are untimely, and he has presented no cognizable basis for due process tolling of the statute of limitations. The trial court did not err in dismissing the petition.

The State’s motion for affirmance pursuant to Rule 20 is granted. The judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

PRESIDING JUDGE JOSEPH M. TIPTON